

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT GLENN,
CDCR #C-65516,

Plaintiff,

vs.

UNKNOWN,

Defendants.

Civil No. 15cv1339 BEN (DHB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING
FEE REQUIRED BY
28 U.S.C. § 1914(a)**

Plaintiff Albert Glenn, a prisoner currently incarcerated at California State Prison in Lancaster, California ("LAC"), has filed an almost completely illegible pleading which, as far as the Court can decipher, contains acts of retaliation and unprofessional misconduct committed by unidentified prison officials at unspecified times and occurring at both LAC and Calipatria State Prisons. (Docket No. 1, Compl. at 1, 4.)

Because Plaintiff is proceeding without counsel, the Court has liberally construed Plaintiff's pleading as an attempt to commence a civil action pursuant to 42 U.S.C. § 1983. *See Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988) (where a plaintiff appears in propria persona, the Court must construe his pleadings liberally and afford plaintiff any benefit of the doubt).

1 **I. Failure to Pay Filing Fee or Request IFP Status**

2 All parties instituting any civil action, suit or proceeding in a district court of
 3 the United States, other than a writ of habeas corpus, must pay a filing fee of \$400.¹
 4 See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only
 5 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28
 6 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

7 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 8 commence this action, nor has he submitted a Motion to Proceed IFP. Therefore, his
 9 case is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a). And while the
 10 Court would ordinarily grant him leave to file an IFP motion pursuant 28 U.S.C.
 11 § 1915(a), it finds, for the reasons set out below, that doing so would be futile since
 12 Plaintiff is no longer entitled to that privilege.

13 **II. 28 U.S.C. § 1915(g)'s "Three-Strikes" Bar**

14 "All persons, not just prisoners, may seek IFP status." *Moore v. Maricopa*
 15 *Cnty. Sheriff's Office*, 657 F.3d 890, 892 (9th Cir. 2011). "Prisoners," however, "face
 16 an additional hurdle." *Id.* In addition to requiring prisoners to "pay the full amount of
 17 a filing fee" in installments as provided by 28 U.S.C. § 1915(a)(3)(b), the Prison
 18 Litigation Reform Act ("PLRA") amended section 1915 to preclude the privilege to
 19 proceed IFP in cases where the prisoner:

20 . . . has, on 3 or more prior occasions, while incarcerated or
 21 detained in any facility, brought an action or appeal in a court
 22 of the United States that was dismissed on the grounds that it
 23 is frivolous, malicious, or fails to state a claim upon which
 24 relief can be granted, unless the prisoner is under imminent
 25 danger of serious physical injury.

26 28 U.S.C. § 1915(g). "This subdivision is commonly known as the 'three strikes'
 27 provision." *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). "Pursuant to §

28 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after
 29 May 1, 2013, must pay an additional administrative fee of \$50. See 28 U.S.C. § 1914(a),
 30 (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May
 31 1, 2013. However, the additional \$50 administrative fee is waived if the plaintiff is
 32 granted leave to proceed IFP. *Id.*

1 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also*
 2 *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (under the PLRA,
 3 “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred
 4 from IFP status under the three strikes rule[.]”). The objective of the PLRA is to
 5 further “the congressional goal of reducing frivolous prisoner litigation in federal
 6 court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

7 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,
 8 which were dismissed on the ground that they were frivolous, malicious, or failed to
 9 state a claim,” *King*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the
 10 district court styles such dismissal as a denial of the prisoner’s application to file the
 11 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146,
 12 1153 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited
 13 by section 1915(g) from pursuing any other IFP action in federal court unless he can
 14 show he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C.
 15 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting section 1915(g)’s exception for
 16 IFP complaints which “make[] a plausible allegation that the prisoner faced
 17 ‘imminent danger of serious physical injury’ at the time of filing.”).

18 III. Application to Plaintiff’s Case

19 As an initial matter, the Court has reviewed Plaintiff’s pleading and has
 20 ascertained that it contains no “plausible allegation” to suggest Plaintiff faced
 21 imminent danger of serious physical injury at the time of filing. *See Cervantes*, 493
 22 F.3d at 1055. While far from clear, it appears Plaintiff seeks to challenge the
 23 “professional[ism] of staff,” and unspecified acts of retaliation “driven by
 24 homosexual wardens.” (Compl. at 3.)

25 Additionally, even if Plaintiff had filed a motion to proceed IFP, the Court
 26 notes that Plaintiff is not entitled to the IFP privilege.

27 A court ““may take notice of proceedings in other courts, both within and
 28 without the federal judicial system, if those proceedings have a direct relation to

1 matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting
2 *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); see also *United*
3 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
4 (9th Cir. 1992).

5 Thus, this Court takes judicial notice that Plaintiff Albert Glenn, CDCR Inmate
6 #C-65516, has had at least three prior civil actions or appeals dismissed on the
7 grounds that they were frivolous, malicious, or failed to state a claim upon which
8 relief may be granted. They include:

- (1) *Glenn v. Fox*, Central Dist. Cal. Civil Case No. 2:02-cv-09126-UA-MLG (Dec. 20, 2002) (Order denying IFP and dismissing case based on absolute judicial immunity)² (Doc. No. 2) (strike one);
- (2) *Glenn v. Johnson*, Central Dist. Cal. Civil Case No. 2:03-cv-00664-UA-MLG (Feb. 10, 2003 Order denying IFP and dismissing complaint for lack of jurisdiction) (Doc. No. 2), and (Aug. 5, 2003 Order denying leave to appeal IFP, certifying that appeal would be frivolous pursuant to 28 U.S.C. § 1915(a)(3)) (Doc. No. 6) (strike two); and
- (3) *Glenn v. Ryan*, Southern Dist. Cal. Civil Case No. 3:03-cv-00414-L-POR (May, 9, 2003 Order denying IFP and dismissing action for failing to state a claim pursuant to 28 U.S.C. § 1915A(b)(1) (Doc. No. 3), and (Nov. 19, 2003 Certified copy of judgment, Ninth Circuit Court Appeal No. 03-56288, Order dismissing appeal for lack of jurisdiction) (Doc. No. 11) (strike three).

Accordingly, because Plaintiff has, while incarcerated, already accumulated three “strikes” as defined by section 1915(g), and he fails to make a plausible allegation that he faced imminent danger of serious physical injury at the time he filed

² When absolute immunity applies, claims for damages are frivolous. See *Baker v. King Cnty. Prosecutor's Office*, 981 F.2d 1257 (9th Cir. 1992); see also *Mullis v. U.S. Bankr. Court*, 828 F.2d 1385, 1394 (9th Cir. 1987) (finding claims for damages against federal judge entitled to absolutely immunity patently frivolous).

1 this case, he is not entitled to the privilege of proceeding IFP. *See Cervantes*, 493
2 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (noting that 28 U.S.C. § 1915(g) “does not
3 prevent all prisoners from accessing the courts; it only precludes prisoners with a
4 history of abusing the legal system from continuing to abuse it while enjoying IFP
5 status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt
6 permission to proceed IFP is itself a matter of privilege and not right.”).

7 **IV. Conclusion and Order**

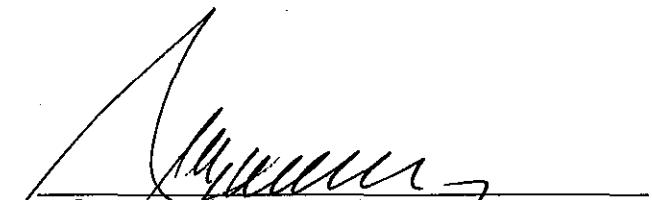
8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to
10 prepay the \$400 civil filing fee required by 28 U.S.C. § 1914(a); and
11 (2) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
12 therefore, not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge*
13 *v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th
14 Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal
15 would not be frivolous).

16 The Clerk shall close the file.

17 **IT IS SO ORDERED.**

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19 DATED: September 22, 2015



HON. ROGER T. BENITEZ
United States District Judge

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